

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LEE PERKINS,

Petitioner,

v.

GARY RODEN,

Respondent.

**Civil Action No.
08-40231-FDS**

**MEMORANDUM AND ORDER ON
PETITIONER’S MOTION TO PROCEED**

SAYLOR, J.

Petitioner Lee Perkins was convicted of first-degree murder and aggravated rape in Massachusetts Superior Court on January 20, 2000. After his conviction was affirmed by the Supreme Judicial Court, he filed a petition for habeas relief pursuant to 28 U.S.C. § 2254 in which he asserted seven claims. In his opposition to the petition, respondent Gary Roden, the Superintendent of NCCI-Gardner, contended that petitioner failed to exhaust his state remedies as to his first claim (that a motion to suppress DNA evidence should have been granted). Specifically, the argument that denial of the motion resulted in violations of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution was not raised in petitioner’s state court appeal.

On April 28, 2011, the Court found that that claim was unexhausted and ordered that the petition be dismissed unless petitioner chose to dismiss the unexhausted claim and proceed with the exhausted claims. Petitioner filed a motion to stay the case while he fully exhausted his claim

in state court. On January 24, 2012, the Court denied the motion to stay. Petitioner now moves to dismiss the unexhausted claim and proceed on the exhausted claims.

Petitioner's motion to proceed is GRANTED and any claims that the motion to suppress DNA evidence was denied in violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution are hereby DISMISSED.

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: March 1, 2012